

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

Complainants,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

Respondents.

**COMPLAINANTS' BRIEF IN OPPOSITION TO THE RESPONDENTS'
MOTION FOR LEAVE TO SUPPLEMENT RESPONSE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's (the "Commission") Rules of Practice and Procedure (46 C.F.R. 502 et seq.), Complainants, through their Counsel, Marcus A. Nussbaum, Esq., respectfully submit this brief in opposition to the motion by respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc. (collectively "Respondents"), dated May 10, 2016 for leave to supplement their response to the Commission's Notice of Default and Order to Show Cause of March 30, 2016.

This brief is respectfully submitted by Complainants herein in opposition to a second motion by Respondents to enlarge their time within which to file a Response to the Commission's Notice of Default and Order to Show Cause in the above captioned matter, and upon such enlargement, to accept further additional 'argument', to wit: an Affirmation from one Jon Werner, counsel representing the same Respondents herein in an unrelated matter. It is respectfully

submitted that as set forth below, Respondents' second motion in the last four (4) days seeking leave to file supplemental responses should be denied in its entirety, with prejudice.

At the outset, it is noted that Respondents herein have previously on numerous occasions petitioned the Commission for multiple enlargements, extensions, and courtesies with respect to virtually each and every filing and/or procedural aspect of this case. Most recently, and just four (4) days prior to this writing Respondents made an identical application, and have now brought on their instant motion for yet a third bite at the apple in a continued desperate campaign to evade the all but certain impending default judgment herein.

Specifically, Respondents have provided an affirmation from the said Mr. Werner, an attorney who represents Respondents Michael Hitrinov and Empire United Lines Co., Inc. in an unrelated matter which was recently resolved to the mutual satisfaction of the parties therein. Though not germane to the case at bar, it is nonetheless noted that in so doing, Mr. Werner has breached the confidentiality provisions of the resolution of said unrelated matter by disclosing details of the negotiations leading up to said resolution.

As to the alleged 'substance' of Mr. Werner's affirmation, which is in itself rank hearsay and should thus not be considered by the Commission, Mr. Werner avers to representations allegedly made by *pro hac vice* counsel therein, with respect to a purported United States Postal Service investigation of Mr. Hitrinov.

Due to the confidentiality provisions of the aforementioned resolution in the unrelated matter involving Mr. Werner's representation of the Respondents therein, Complainants' counsel are regrettably unable to provide any information regarding the 'substance' of Mr. Werner's affirmation as such disclosure or discussion of same would constitute a breach of the confidentiality provision of said resolution.

Notwithstanding the foregoing, and apart from pure speculation, complete conjecture, and utter surmise, conspicuously absent from Mr. Werner's affirmation is the establishment or providing of *any* nexus whatsoever between the alleged returned mail referred to therein and the case at bar. It is noted, however, and as the Commission is well aware, that Mr. Hitrinov has a demonstrated and proven history of personally refusing service of legal documents and extended efforts to evade service of same; most particularly, by having refused to accept service of legal documents sent to Mr. Hitrinov from the Commission via UPS.

Consequently, it is respectfully submitted that were the Commission to grant Respondents' application for yet a 'third bite at the apple' to oppose the impending default judgment by acceptance of Mr. Werner's affirmation, such acceptance would cause the Commission to engage in speculation as to unproven, vague, and nebulous representations which can in no way serve to constitute either good cause shown, or any reasonable excuse for Respondents' default.

In conclusion, Respondents have yet again sought an undeserved and unsubstantiated further bite at the apple upon no good cause nor good faith basis *whatsoever*, other than yet a further "eleventh hour" attempt to desperately evade and avoid the issuance of a default judgment herein, absent any good cause shown to warrant denial of the issuance of said default judgment.

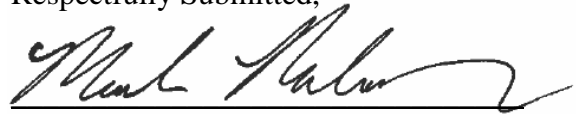
It should further be noted that Respondents' counsel has acted even more egregiously in bringing on Respondents' instant application by abjectly failing to make *any attempt whatsoever* to 'meet and confer' with Complainants prior to filing the instant application; nor did Respondents' counsel seek permission from the Commission prior to doing so having apparently now become so emboldened so as to eschew and otherwise ignore the Commission's rules and procedures for the filing of motions.

CONCLUSION

For all these reasons as set forth above, Complainants respectfully urge and otherwise pray that the Commission *deny* Respondents' application *in its entirety*. It is further respectfully requested that the Commission now formally admonish Respondents from and against any and all further attempted supplemental submissions or additional violations of the Commissions' rules and procedures upon penalty of the imposition of fines, sanctions and other appropriate relief as is within the Commission's discretion and authority.

Dated: Brooklyn, New York
May 10, 2016

Respectfully Submitted,

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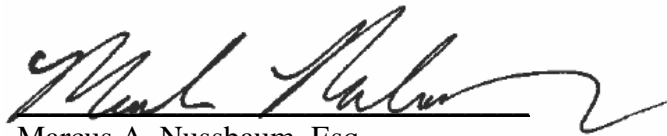
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' BRIEF IN OPPOSITION TO THE RESPONDENTS' MOTION FOR LEAVE TO SUPPLEMENT RESPONSE** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
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Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", is written over a horizontal line.

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Dated: May 10, 2016 in Brooklyn, New York.